

## REMARKS

Claims 8, 9, 11 and 16-20 are pending in the application. Claims 16 and 17 have been amended. Claims 2 and 4-6 have been canceled without prejudice or disclaimer. Claims 18-20 are newly added. Reconsideration of this application is respectfully requested.

Independent claim 17 has been amended to incorporate the subject matter of canceled dependent claims 2 and 4. Independent claim 17 has also been amended by moving the grease filter recital from after to before the fan recital.

The Office Action rejects claims 2, 4-6, 8-11, 15, 16 and 17 under 35 U.S.C 103(a) as unpatentable over French Patent No. 2,705,766 to Sylvain, hereafter Sylvain, in view of United Kingdom Patent No. 2,349,458 to Thorneywork, hereafter Thorneywork, and German Patent No. 4,139,904 to Kummer, hereafter Kummer.

This rejection is moot as to claims 2, 4-6, 10 and 15, which have been canceled.

This rejection is traversed.

Amended independent claim 17 recites:

“a catalytic converter mounted to an upstream face of said baffle plate to cover all of said perforations;

a grease filter mounted on an upstream side of said catalytic converter; and

a fan disposed in said fan area to circulate air between said cooking area and said fan area via said space, said grease filter,

said catalytic converter, said perforations and said fan, wherein cooking byproducts entrained in the air in said cooking area are substantially removed by said grease filter and said catalytic converter before the air exits said cooking area via said perforations and do not contaminate said fan."

The Examiner admits that Sylvain does not disclose:

"a grease filter mounted upstream of the catalytic converter, a plurality of perforations, or the air directed around the baffle."

The Examiner contends that Kummer discloses an oven in which the air is directed about the baffle and that Thorneywork discloses a grease filter upstream of the catalytic converter, and that "in the absence of criticality of these differences" the claimed invention is obvious over the combination of Sylvain, Kummer and Thorneywork.

The Examiner contends that it is obvious to provide Sylvain's oven "with a grease filter in the manner taught by Thorneywork". Thorneywork discloses a grease filter and catalytic converter that are mounted externally of the cooking area in a ductwork leading to the fan. Thus, the combination of Sylvain and Thorneywork in the manner taught by Thorneywork results in the grease filter and catalytic converter being mounted externally of the cooking area in a ductwork leading to the fan. In contrast, amended independent claim 17 recites that the grease filter and the catalytic converter are mounted to the upstream face of the baffle plate, i.e., internally of the cooking area. This provides important advantages. First, as recited in amended independent claim 17, the cooking byproducts do not enter the fan area and do not contaminate the fan blades or other parts of the fan area. Second, the grease filter and catalytic converter, being mounted internally of the cooking area, can be easily reached through the oven door and removed for cleaning and/or maintenance. This can

be done quickly without disassembly of the cooking chamber. Therefore, amended independent claim 17 is unobvious over the combination of Sylvain, Kummer and Thorneywork.

Amended independent claim 17 recites that the catalytic converter and grease filter are mounted to an upstream face of the baffle plate such that cooking byproducts entrained in the air in the cooking area are substantially removed before the air exits the cooking area and do not contaminate the fan or other parts of the fan area. This provides important advantages. First, as recited in amended independent claim 17, the cooking byproducts do not enter the fan area and do not contaminate the fan blades or other parts of the fan area. Second, the grease filter and catalytic converter, being mounted internally of the cooking area, can be easily reached through the oven door and removed for cleaning and/or maintenance. This can be done quickly without disassembly of the cooking chamber. Because the fan and fan area are not subjected to the entrained food byproducts, they do not need as frequent service as the easily removable grease filter and catalytic converter.

In contrast, Kummer's catalytic converter is located in the fan area about the periphery of the fan. The air that enters the fan area from the cooking area is entrained with cooking byproducts that contaminate the fan and other parts of the fan area before being filtered by the catalytic converter. This requires frequent cleanings, which can only be done by disassembling the fan area. The time required to do this is down time of the oven. In contrast, the oven of the present is down for only short periods of time to clean the cooking area and the easily removable grease filter and catalytic converter.

The rejection is erroneous because there is no motivation for one skilled in the art to modify Sylvain in the manner suggested by the Examiner. In fact, the suggestion to use Sylvain in combination with Thorneywork and Kummer is improperly based on the hindsight of Applicants' disclosure. Such hindsight

reconstruction of the art cannot be the basis of a rejection under 35 U.S.C. 103. The prior art itself must suggest that modification or provide the reason or motivation for making such modification. In re Laskowski, 871 F.2d 115, 117, 10 USPQ 2d 1397, 1398-1399 (CAFC, 1989). "The invention must be viewed not after the blueprint has been drawn by the inventor, but as it would have been perceived in the state of the art that existed at the time the invention was made." Sensonics Inc. v. Aerosonic Corp. 38 USPQ 2d 1551, 1554 (CAFC, 1996), citing Interconnect Planning Corp. v. Feil, 774 F. 2d 1132, 1138, 227 USPQ 543, 547 (CAFC, 1985).

In particular, the Examiner concludes that it is obvious to one of ordinary skill in the art to modify Sylvain's back wall 16 with Kummer's back wall 3. The Examiner does not provide any motivation for one of skill in the art to make this modification. It is submitted for the reason set forth below that there is no motivation.

One reason for lack of motivation is that there is no evidence of record to combine Sylvain and Kummer in the manner suggested by the Examiner. One of skill in the art confronted by Sylvain and Kummer is presented with a choice of Sylvain's oven or Kummer's oven. The Examiner's suggestion of using only a part (the baffle arrangement) of Kummer's oven in place of a part (baffle arrangement) of Sylvain's oven is not taught in either Sylvain or Kummer. There is no evidence of record that supports the Examiner's suggested combination other than Applicant's disclosure. It is impermissible to base a conclusion of obviousness on an Applicant's disclosure. This is hindsight, which cannot be used to support motivation.

Another reason for lack of motivation is that the combination of Sylvain and Kummer changes the operation, function and purpose of Sylvain. Sylvain discloses a convection oven that has a dual purpose of an improved elimination of the toxic gases and smoke produced by the combustion of fats and the

discharge of the completely oxidized products of the combustion from the oven. See page 3, lines 9-12, of the English translation of Sylvain. To accomplish the improved elimination of the toxic gas and smoke, Sylvain uses a catalytic converter 20 disposed in an opening 17 of a back wall 16 of the muffle 3. A fan 13 is disposed behind back wall 16 to take in air from muffle 3 via catalytic converter 20. Catalytic converter 20 transforms the airflow by oxidation. Fan 13 circulates the transformed airflow back to muffle 3 via openings 28 in back wall 16.

To accomplish the discharge of the oxidized byproducts of the catalytic transformation, Sylvain uses a chimney 7 disposed centrally of the top wall of muffle 3 (see Fig. 1) and a distribution of openings 28 in back wall 16 into groups according to the four cardinal points around the central axis 29 of catalytic converter 20. This distribution provides a specific airflow in muffle 3 that is well below the top wall of muffle 3 so that there is a space between the airflow and the top wall of muffle 3. This results in air turbulence in this space that allows the discharge of the oxidized byproducts from muffle 3 via chimney 7.

In contrast, Kummer's fan 3 returns oxidized airflow to muffle 1 around the edges of back wall 3 of muffle 1. This airflow is adjacent the top wall of Kummer's muffle 1. That is, the airflow sweeps across the top wall. If Kummer's wall were used in Sylvain's design, the airflow along the top of the muffle would sweep oxidized byproducts along the top wall of muffle 3 and away from chimney 7. This would result in no discharge of the oxidized byproducts from Sylvain's muffle 3.

Moreover, the sweeping action of the airflow would create a negative pressure (Venturi effect) on the muffle side of chimney 7, which would result in a sucking action of air from ambient via collection space 12 and chimney 7 into muffle 3. This would also seriously affect the temperature of the airflow and the cooking of food.

Thus, the modification suggested by the Examiner would render the Sylvain's oven ineffective for its intended purpose of discharge of the oxidized byproducts via chimney 7 or would change the operation of Sylvain as there would be no discharge. In either case, this is tantamount to no suggestion or motivation to make the proposed modification. See MPEP, 2143.01 V and VI.

Moreover, it is submitted that one of ordinary skill in the art would not choose to make such a modification because of the elimination of the by-product discharge from Sylvain's muffle 3.

Sylvain's assignee is in the business of selling ovens to household consumers and not to eating establishments, such as restaurants and other entities that cook food for patrons. As a result, it is unobvious to one of ordinary skill in the art of household ovens to add a grease filter or change the baffle arrangement of Sylvain's oven.

For the reasons set forth above, it is submitted that the rejection of claims 8, 9, 11, 16 and 17 under 35 U.S.C. 103(a) is obviated by the amendment and should be withdrawn.

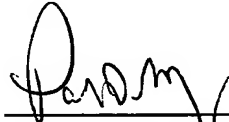
Newly presented claims 18-20 depend from amended independent claim 17 and are distinguished from the cited art for same reasons set forth in the discussion of amended independent claim 17. In addition, claims 18 and 19 recite that the cooking byproducts entrained in the air stream comprises both grease and smoke and that the catalytic converter has a thickness of about 2 centimeters. Neither Sylvain nor Kummer discloses these features. Claim 20 recites that the catalytic converter and the grease filter are located within the cooking area, which is not disclosed by Sylvain, Kummer or Thorneywork. Accordingly, it is submitted that claims 18-20 distinguish from the cited art and are, therefore, allowable.

It is respectfully requested for the reasons set forth above that the rejection under 35 U.S.C. 103(a) be withdrawn, that claims 8, 9, 11 and 16-20 be allowed and that this application be passed to issue.

Respectfully Submitted,

Date: \_\_\_\_\_

10/6/06



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